



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

December 19, 2023

CERTIFIED MAIL: 9589 0710 5270 0688 6540 28

Oregon Department of Transportation
c/o Ron Francis
455 Airport Road SE, Building B
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/401-WR-2023-566

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the Oregon Department of Transportation (ODOT) a civil penalty of \$3,450 for violations of the 401 Water Quality Certification (401 WQC) issued to ODOT for the OR 18 Spur: South Yamhill River Bridge Project. Specifically, in August 2023, the contractors ODOT hired to complete the project discharged uncured concrete into the South Yamhill River. Pursuant to Condition 1 of the 401 WQC, ODOT is responsible for the work of its contractors.

DEQ issued this penalty because the discharge of uncured concrete into waters of the state is known to negatively impact aquatic organisms. DEQ appreciates ODOT's effort to ensure the violation is not repeated by requiring adjustments to the misting process to prevent further overflows and drips to the river. DEQ considered these efforts when determining the amount of the civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Delia Negru, DEQ 401 Program
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:

OREGON DEPARTMENT OF
TRANSPORTATION

Respondent.

NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER

CASE NO. WQ/401-WR-2023-566

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 048.

II. FINDINGS OF FACT

1. Respondent is a public agency of the State of Oregon, created under ORS 184.615.

2. On December 5, 2022, DEQ received a valid Clean Water Act Section 401 water quality certification (401 WQC) request from Respondent to complete the OR 18 Spur: South Yamhill River Bridge project (the Project). The Project is located along OR 18 (3-mile) Lane at milepost 46.6 in McMinnville in Yamhill County, Oregon.

3. The Project involved the complete replacement of a bridge that crosses the South Yamhill River, a water of the state pursuant to ORS 468B.005(10).

4. On January 12, 2023, DEQ issued ODOT 401 WQC approval for the Project pursuant to DEQ's Nationwide 401 WQC, subject to the conditions set forth in the approval letter.

5. Pursuant to Condition 1 of the 401 WQC, Respondent is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to the WQC.

6. Pursuant to Condition 9 of the 401 WQC, Respondent "is prohibited from placing biologically harmful materials and construction debris where they could enter waters of the state, including wetlands (wetlands are waters of the state). This includes, but is not limited to: petroleum

1 products, chemicals, cement cured less than 24 hours; welding slag and grindings; concrete saw cutting
2 by-products; sandblasted materials; chipped paint; tires; wire; steel posts; asphalt; and waste concrete.”

3 7. On or about August 8, 2023, water that had been misted onto newly poured concrete on
4 the bridge deck was overflowing—and later intermittently dripping— off the side of the bridge deck
5 and into the South Yamhill River below.

6 8. On August 14, 2023, Respondent self-reported to DEQ that in addition to overflow
7 misting water, small chunks of hardened concrete and other construction debris were scattered under
8 and around the bridge below the ordinary high-water mark, including in the river.

9 III. CONCLUSIONS

10 1. Respondent violated Condition 9 of the 401 WQC by placing biologically harmful materials
11 and construction debris in the South Yamhill River, as described in Section II, Paragraphs 6, 7, and 8
12 above. This is a Class I violation pursuant to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$3,450
13 civil penalty for this violation.

14 IV. ORDER TO PAY CIVIL PENALTY

15 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
16 hereby ORDERED TO:

- 17 1. Pay a civil penalty of \$3,450. The determination of the civil penalty is attached as Exhibit No. 1
18 and is incorporated as part of this Notice.

19 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as follows:

20 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
21 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
22 dashboard. Enter the reference number and Account ID included on the attached payment slip. Note: US
23 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
24 charges.

25 Pay by check or money order: Make checks payable to “Department of Environmental Quality”
26 and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with
27 your check or money order and note the case number on your check.

1 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-5100** or email it to DEQappeals@deg.state.or.us. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.
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6 12/19/2023
7 Date


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9 Kieran O'Donnell, Manager
10 Office of Compliance and Enforcement
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EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION: Respondent violated Condition 9 of its 401 WQC by placing biologically harmful materials in the South Yamhill River.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(H) because the Project was authorized under a Nationwide Permit, which is considered a Tier I dredge and fill project under OAR 340-048-0055(3)(a).
- "P" is whether Respondent has any prior significant actions (PSAs), as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10 according to OAR 340-012-0145(2) because in the prior ten years Respondent has had prior significant actions consisting of nine or more Class I equivalent violations in Case Nos. WQ/M-ER-2016-144, WQ/401-NWR-2020-141, WQ/401-NWR-2021-504, WQ/SW-NWR-2022-595, and WQ/401-WR-2023-567.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were at least two occurrences of the violation. The dried concrete pieces under the bridge indicate that discharges occurred while the concrete was actively being poured. Additionally, violations occurred during the concrete curing process when the concrete was being misted.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent reasonably should have known both that the 401 WQC prohibits the discharge of concrete into waters of the state and that the Respondent is responsible for ensuring that its contractors comply with the terms of the 401 WQC.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated by adjusting the misting practices to ensure that additional water does not leave the bridge deck.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 2 + 2 + -1)] + \0
= $\$1,500 + (\$150 \times 13) + \$0$
= $\$1,500 + \$1,950 + \$0$
= $\$3,450$

Oregon Department of Environmental Quality
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100



State of Oregon
Department of Environmental Quality

Phone: 503-229-5437
Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	December 19, 2023
RESPONSE DATE :	February 27, 2024
TOTAL PENALTY:	\$3,450.00

Account Name:	NWP #14 - OR 18 SPUR: SOUTH YAMHILL RIVER BRIDGE		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400030
SubSystem ID:	185196	FIMS Acct. ID:	9797

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 3,450.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 3,450.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2400030		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	February 27, 2024
FIMS ACCT. ID:	9797	TOTAL PENALTY DUE:	\$3450.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

☐ Check this box if updated address information has been provided on the back of the form.

DEQ FINANCIAL SERVICES - LBX4244
PO BOX 4244
PORTLAND OR 97208-4244

00401 7400 10040 74001 0500 000000 0095000097976CPGFD2400030000003450001



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
12/18/2023	2023-566 WQ-401-WR-2023-566	\$3,450.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update
your mailing address online or provide the
following information:

Name _____
Address _____
City, State, Zip _____